



Agenda Date: 8/1/05

Agenda Item: 6B

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

RELIABILITY AND SECURITY

IN THE MATTER OF THE PETITION FOR)
AUTHORIZATION FOR SOUTH JERSEY GAS)
COMPANY TO EXERCISE ITS POWER OF)
EMINENT DOMAIN FOR AN EASEMENT ON)
PROPERTY IN HAMILTON TOWNSHIP, NEW)
JERSEY, LOCATED AT BLOCK 1101, LOT 2.02)

DECISION AND ORDER

DOCKET NO. GM05030231

(SERVICE LIST ATTACHED)

BY THE BOARD:

I. BACKGROUND

On June 22, 2005, this Board issued its Decision and Order in Docket No. GO05020165 authorizing South Jersey Gas Company ("South Jersey", "Company", or "Petitioner") to construct, within the route designated by South Jersey, approximately 6.5 miles of 24-inch natural gas transmission pipeline with a maximum allowable operating pressure of 676 pounds per square inch gauge (psig) and a maximum operating pressure of 350 psig (the "Pipeline"). The Pipeline will extend from Estell Manor in Atlantic County, New Jersey to Hamilton Township in Atlantic County, New Jersey.

In approving construction of the Pipeline, the Board, in its aforementioned Order of June 22, 2005, found, inter alia, as follows:

- 1 Through its written submissions and testimony presented at the hearing, Petitioner has shown by a preponderance of credible evidence, that the Proposed Pipeline is necessary for the service, accommodation, convenience and safety of the public, in order that Petitioner may provide its customers with safe, adequate, reliable and proper service; that there are no reasonable alternatives to the Proposed Pipeline authorization sought by Petitioner; and that

the construction and installation of the Proposed Pipeline is compatible with the public interest and will not in any instance unduly injure the owners or occupants of any structure within one hundred feet (100') of the Proposed Pipeline;

2. Petitioner has demonstrated to the Board the emergent need to construct the Proposed Pipeline on or before September 1, 2005, the commencement of the next heating season;
3. The construction and installation of the Proposed Pipeline is necessary and is in the public interest; and
4. The Board is satisfied that the proposed construction cannot reasonably be avoided.

Petitioner will be constructing the Pipeline in public right-of-way, and, through the obtaining of easements, over private property. As a result of its inability to successfully negotiate with the co-owners of one of the affected properties, the Petitioner, on March 14, 2005, filed the Petition in this docket seeking authorization from this Board, pursuant to N.J.S.A. 48:3-17.7, to exercise the power of eminent domain in order to obtain an easement across that property located in Hamilton Township in Atlantic County.. Specifically, South Jersey seeks authorization to obtain easement rights over Block 1101, Lot 2.02 on the Tax Map of Hamilton Township. The co-owners have recently subdivided Lot 2.02, and, as a result, South Jersey seeks an easement across Block 1101, Lots 2.02, 2.03 and 2.04 (the "Lots") to permit construction of the Pipeline.

Consistent with the Board's prior findings, South Jersey anticipates commencing construction during September of 2005, and completing the Pipeline prior to the winter season commencing November 1, 2005.

II. PROCEDURAL HISTORY

A hearing was held in this matter on July 18, 2005, at 11:00 a.m., at the Board's offices located in Newark, New Jersey. At that hearing, a Certificate of Service was received in evidence as Exhibit P-1. Exhibit P-1 demonstrated that the Petition was served by hand on March 18, 2005, and March 21, 2005, upon Donald G. Targan and Edward DiNicolantonio, co-owners of the Lots, and upon Lucca Contracting, Inc., a lienholder.

In addition, on June 24, 2005, a Notice of the hearing was served by hand upon the Mayor of Hamilton Township, the Clerk of Hamilton Township, Lucca Contracting, Inc., and Messrs. Targan and DiNicolantonio.

Messrs. Targan and DiNicolantonio, and Lucca Contracting, Inc. all failed to serve an Answer to the Petition. Other than representatives of the Company, no one appeared at the aforementioned hearing at the offices of the Board.

III. TESTIMONY PRESENTED BY THE COMPANY

At the hearing, Petitioner presented Maria C. Zuccarino, who holds the title of Associate Engineer with the Company. Ms. Zuccarino has been an engineer since 1991, and throughout that time has been involved in designing and supervising the construction of pipelines.

Ms. Zuccarino holds a B.S. in Civil Engineering from Drexel University, and is a Licensed Professional Engineer in the State of New Jersey and in the Commonwealth of Pennsylvania. Since 2000, she has been employed by South Jersey in the design and supervision of construction of natural gas pipelines. Ms. Zuccarino is responsible for overseeing all aspects of the Pipeline that is the subject of this matter.

Nature of the Petition

Ms. Zuccarino testified that the Company is requesting that the Board grant it authority to pursue a condemnation action against the owners of Block 1101, Lot 2.02, which was recently subdivided into Lots 2.02, Lot 2.03, and Lot 2.04 in Hamilton Township, Atlantic County. The witness indicated that an easement is required so that South Jersey will be able to construct the Pipeline. Ms. Zuccarino testified that the easement across these Lots is the only easement needed, but not yet secured, and that, once obtained, will allow the Pipeline to be constructed.

Overview of the Pipeline

Ms. Zuccarino sponsored Exhibit P-2, which was a diagram portraying the proposed route of the Pipeline. As pertinent to the current Petition, Exhibit P-2 demonstrated a straight section which is wholly within an Atlantic City Electric Company right-of-way (Atlantic City Electric Company "right-of-way" or "easement"). The Atlantic City Electric Company easement is a 200-foot wide right-of-way of which 100 feet is already cleared. The Lots are within the Atlantic City Electric Company right-of-way.

The cleared portion of the Atlantic City Electric Company right-of-way is the northern 100 feet of that easement on which is housed electric tension towers approximately 100 feet in height and electric transmission lines. The southern 100 feet of the Atlantic City Electric Company easement is presently wooded although Atlantic City Electric Company retains the right to clear the southern portion, and to construct high tension wires and towers.

The easement which South Jersey seeks, as well as a portion of the Pipeline, will run through the northern border of the cleared portion of the Atlantic City Electric Company right-of-way. As a result, it will have minimal impact on any landowners.

South Jersey seeks a permanent 15-foot wide easement within the Atlantic City Electric Company right-of-way, and an additional 25 foot (total of 40 feet) temporary workspace easement during the construction phase of the Pipeline.

Ms. Zuccarino testified that Petitioner had to acquire easements from property owners within the straight line portion of the Pipeline, as portrayed on Exhibit P-2. Ms. Zuccarino also testified that to date, South Jersey had acquired easements from 13 of the 14 property owners within the Atlantic City Electric Company right-of-way and that the proposed condemnees, co-owners Targan and DiNicolantonio, are the only property owners from whom necessary easements have not been obtained.

Alternative Routes

Petitioner considered alternative routes for the Pipeline, to those portrayed in Exhibit P-2. However, the route portrayed on Exhibit P-2 would have had the least impact on adjacent property owners of any route. As a result, both the Pinelands Commission, and the New Jersey Department of Environmental Protection of the State of New Jersey, implementing the Coastal Area Facilities Review Act, required that the route contained on Exhibit P-2 be utilized.

Nature of the Easement to be Condemned

Ms. Zuccarino sponsored Exhibit P-4, which was a schematic diagram portraying the easement required. Exhibit P-4 demonstrates the need for a 15-foot wide permanent easement, and an additional 25 foot temporary workspace easement to be utilized during construction. The total permanent easement would constitute 0.13 acres, and the temporary workspace easement would constitute another 0.20 acres. Exhibit P-4 demonstrates that both easements would run within the northern boundary of the Lots.

Ms. Zuccarino testified that in order to install the pipeline on the Lots, South Jersey will not have to clear any mature trees. However, South Jersey will have to clear a few years of overgrowth. She further noted that, from time to time, every few years, Atlantic City Electric Company also clears the overgrowth.

Ms. Zuccarino also sponsored Exhibit P-5, which was a portion of the Tax Map of Hamilton Township, portraying the lots surrounding the Lots. Of the seven property owners of lots surrounding the Lots, easements have been obtained from all of them but for Messrs. Targan and DiNicolantonio.

In testifying as to the attempts by South Jersey to obtain the necessary easements from Messrs. Targan and DiNicolantonio, Ms. Zuccarino described the efforts that were made, including phone calls to the owners which went unreturned and numerous written requests by Petitioner seeking the necessary easements.

Ms. Zuccarino stated that the owners were notified that an appraisal company would be inspecting the Lots, and were afforded the opportunity to accompany the appraisers on the inspection. The property owners elected not to attend the inspection. She further stated that the appraisers developed an appraised value for the easement of \$2,600.00 and that South Jersey submitted a written proposal to Messrs. Targan and DiNicolantonio under the Eminent Domain Act offering \$3,000.00 for the easement.

Ms. Zuccarino testified that it was explained to Messrs. Targan and DiNicolantonio that the proposed easement would not affect the buildable portion of the Lots as the Pipeline was being installed within existing Atlantic City Electric Company right-of-way. While noting that the co-owners considered the Company's offer to be too low, Ms. Zuccarino stated that, to date, the co-owners have never provided a counter-offer.

Need for the Pipeline

Ms. Zuccarino testified that the Pipeline is required to ensure that Petitioner has the ability to move sufficient amounts of natural gas to customers in the heavily populated areas of South Jersey's eastern and coastal service territory, on a design day. Ms. Zuccarino further testified that without the Pipeline, it is quite possible that South Jersey could be very close to being unable to provide service to some of its customers under design day conditions.

Urgency of the Pipeline

Ms. Zuccarino testified that it is urgent that construction take place in the immediate, short-term future and that it is the intention of South Jersey to have the Pipeline in place prior to November of 2005, the beginning of the winter heating season. Ms. Zuccarino went on to testify that if the Pipeline is not in place prior to November 1, 2005, it would place customers at risk for service interruptions on design days.

At the conclusion of Ms. Zuccarino's testimony, counsel for South Jersey Gas Company noted an emergent need to construct the Pipeline commencing on or before September 1, 2005, in preparation of the next heating season. Counsel noted that South Jersey intended to commence such construction in a timely manner. In order to do so, South Jersey intends to file an application with the Superior Court, State of New Jersey, Atlantic County, for an order to show cause. The order to show cause would require the landowners, and interested parties to show cause why an order should not be entered permitting Petitioner to file a declaration of taking, or do whatever action the court deems appropriate, in order to allow South Jersey to begin construction as soon as possible. South Jersey would request that the court appoint commissioners to determine the value of the property, which could be done subsequent to the taking. Counsel for the Company requested the Board's support in making the application to the courts.

IV. FINDINGS

After consideration of the entire record, the Board HEREBY FINDS that:

1. Petitioner is a corporation organized and existing under and by virtue of the laws of the State of New Jersey for the purpose, among other things, of supplying gas for residential, commercial and industrial heating, lighting and processes, and is a public utility pursuant to N.J.S.A. 48:2-13, subject to the jurisdiction of this Board;
2. Through its written submissions and testimony presented at the hearing, Petitioner has shown, by a preponderance of credible evidence, that the Pipeline is necessary for the service, accommodation, convenience and safety of the public, in order that Petitioner may provide its customers with safe, adequate, reliable and proper service; that there are no reasonable alternatives to the Pipeline authorization sought by Petitioner; and that the construction and installation of the Pipeline is compatible with the public interest and will not in any instance unduly injure the owners of private property;
3. Petitioner has demonstrated to the Board the emergent need to construct the Pipeline commencing in September of 2005, and completing the Pipeline prior to the commencement of the next heating season, beginning November 1, 2005;
4. The construction and installation of the Pipeline is necessary and is in the public interest;
5. The proposed construction cannot reasonably be avoided;
6. The Pipeline is necessary for the service, convenience and welfare of the public;
7. The easement portrayed within Exhibit P-4 is necessary for the service, convenience and welfare of the public;
8. There is no reasonable, practicable, permanent and reliable alternative to the easement portrayed within Exhibit P-4;

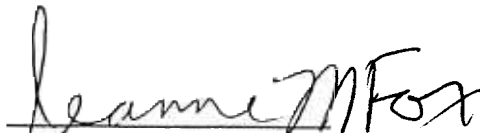
9. Based upon the record in this proceeding, as well as the record in Docket No. GO05020165, there is no reason to deny permission to Petitioner to construct the Pipeline across the Lots;
10. The siting and route of the Pipeline across the Lots is a reasonable and prudent part of Petitioner's system planning, and is reasonably necessary for the purposes of Petitioner;
11. The Pipeline and the easement across the Lots are reasonable and necessary for the service, convenience and welfare of the public in order to enable Petitioner to provide continued safe, reliable and economic service to Petitioner's customers;
12. The Pipeline within the requested easement across the Lots can be constructed, installed and operated without substantial detriment to the public good;
13. The necessary permanent and temporary workspace easements across the Lots cannot be acquired from the co-owners because of disagreement as to the price;
4. The easements across the Lots are reasonably necessary for the service, accommodation, convenience and safety of the public; and that it is necessary that Petitioner take such easements; and that such taking is not incompatible with the public interest and will not unduly injure the owners of private property;
15. Through the records in this matter and in Docket No. GO05020165, Petitioner has demonstrated to the satisfaction of the Board the emergent need to construct the Pipeline prior to the winter season commencing November 1, 2005. The Board is further cognizant that the Petitioner does not have the statutory right to file a Declaration of Taking with the Superior Court of New Jersey for immediate possession of the property. However, the Board supports the Petitioner should it be required to make application to the Superior Court of New Jersey for emergent relief, upon the deposit of monies with the Clerk of the Superior Court, to immediately take possession of the subject property for the purpose of constructing the Pipeline, subject to a full hearing as to the value of the taking.

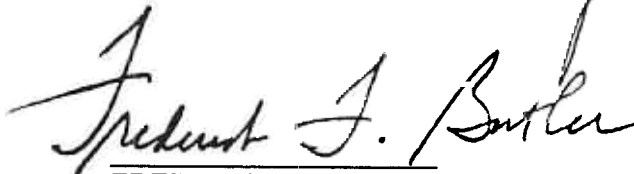
The Board HEREBY ORDERS, pursuant to N.J.S.A. 48:3-17.7, that Petitioner be authorized to commence a condemnation proceeding in the Superior Court of New Jersey, in order to condemn the permanent and temporary workspace easements portrayed on Exhibit P-4.


The authority granted in this Order to exercise the power of eminent domain with respect to the property is declared to be null and void and have no effect whatsoever, unless Petitioner institutes proceedings under Title 20 of the revised Statutes of New Jersey, as amended and supplemented, to acquire the interest sought to be obtained through these proceedings within one year from the date of this Order.

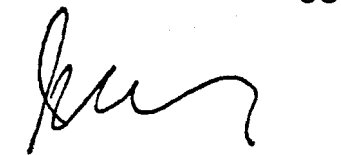
DATED: 8/1/05

BOARD OF PUBLIC UTILITIES
BY:

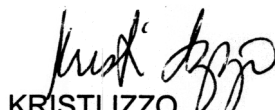

JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

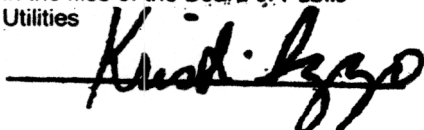

CONNIE O. HUGHES
COMMISSIONER


JACK ALTER
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



**I/M/O the Petition for Authorization for South Jersey Gas Company to Exercise its Power
of Eminent Domain for an Easement on Property in Hamilton Township, New Jersey,
Located at Block 1101, Lot 2.02.**

BPU DOCKET NO. GM05030231

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